

Special Civil Application No 2491 of 1989

Date of decision: 19/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

ARUNKUMAR RAVISHANKER TRIVEDI

vs

COMPETENT AUTHORITY & ADDITIONAL COLLECTOR, RAJKOT & ANR.

Appearance:

Shri Suresh M. Shah, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the  
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

#### ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 23rd November 1985 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 2nd November 1988 in Appeal No. Rajkot-9 of 1986 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioner to be in excess of the ceiling limit by 1510.15 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act. It was duly processed by respondent No. 1. A draft statement in accordance with sec. 8 of the Act was served to the petitioner. At the time of hearing written arguments were submitted. A copy thereof is at Annexure A to this petition. Thereafter, by his order passed on 23rd November 1985 and communicated on 18th December 1985 under sec. 8(4) of the Act, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 1510.15 square meters. A final statement under sec. 9 thereof was ordered to be issued. Its copy together with a copy of the final statement is at Annexure B to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec. 33 thereof. A copy of the memo of appeal is at Annexure C to this petition. Along with the appeal some orders were also produced. A copy of the list of such orders is at Annexure D to this petition. The appellant also produced in appeal certain documentary evidence. A copy of the list of documents as produced is at Annexure E to this petition. After hearing the parties, by the order passed on 2nd November 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure F to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure F to this petition.

3. As rightly submitted by Shri Shah for the petitioner, the constructed house property prior to coming into force of the Act will have to be excluded in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567. The area of the house property is to the tune of 101.72 square meters.

4. It cannot be gainsaid that the Ribbon Development Rules framed under the Bombay Land Revenue Code, 1879 would be applicable to roads connecting different villages, cities or states like National Highways, State Highways and Major District Roads. A ring road is a concept more known to an urban area and it would therefore not be amenable to the Ribbon Development Rules. Even otherwise, both the authorities below have held that no material is brought on record regarding passing of the ring road near the area wherein the properties of the petitioner are situated. So far as the town planning scheme is concerned, if any road is shown therein, it will certainly include within its control area the margin land and plots to be reconstituted would be done accordingly. There would not be any control line for the purpose of keeping the land compulsorily open as is

mentioned in the Ribbon Development Rules. In any case, no material is brought on record to show that because of some town planning scheme road there comes into play some prohibition regarding construction in some area. In absence of any such material on record, the submission urged before me by learned Advocate Shri Shah for the petitioner to exclude the area of land covered by such town planning scheme road cannot be countenanced.

4. In view of my aforesaid discussion, I am of the opinion that the area of the house property to the tune of 101.72 square meters deserves to be excluded from the holding of the petitioner in view of the aforesaid binding ruling of the Supreme Court. The rest of the order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure F to this petition deserves to be maintained. The excess area beyond the ceiling limit in the petitioner's holding therefore deserves to be modified from 1510.15 square meters to 1408.43 square meters.

5. In the result, this petition is accepted to the aforesaid limited extent. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 23rd November 1985 and communicated on 18th December 1985 under sec. 8(4) of the Act together with the final statement at Annexure B to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 2nd November 1988 in Appeal No. Rajkot-9 of 1986 at Annexure F to this petition is maintained subject to the modification that the holding of the petitioner in excess of ceiling limit is modified so as to read 1408.43 square meters. The final statement under sec. 9 of the Act may accordingly be modified. The matter is remanded to respondent No.1 for giving an option to the petitioner for surrender of the excess land in accordance with the final statement. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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